

The 5th October, 1984

No. 9/5/84-6 Lab./6581.---In pursuance of the provisions of section 17 of the Industrial Disputes Act 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and management, of M/s. Frick India Ltd., 13/3, Mathura Road, Faridabad.

IN THE COURT OF SHRI R.N. SINGAL PRESIDING OFFICER, LABOUR COURT, FARIDABAD

Reference No. 197 of 1983.

between

SHRI VIJAY BAHADUR SINGH, WORKMAN AND THE RESPONDENT MANAGEMENT OF
M/S, FRICK INDIA LTD., 13/3, MATHURA ROAD, FARIDABAD

Present.:

Shri Manohar Lal for the workman.

Shri S.L. Gupta for the respondent-management.

AWARD

This reference has been referred to this court by the Hon'ble Governor of Haryana, ---vide his order No. ID/ED 4-83/31751--56, dated 4th July, 1983, under Section 10(i)(c) of the Industrial Disputes Act, 1947 for adjudication of the industrial dispute existing between Shri Vijay Bahadur Singh, workman and the respondent management of M/s. Frick India Ltd., 13/3, Mathura Road, Faridabad. The term of the reference was :

Whether the termination of service of Shri Vijay Bahadur Singh was justified in order ? If not to what relief is he entitled ?

According to the averments in the claim statement he has completed 1½ years of service and a break was shown inbetween. He proceeded on leave from 15th February, 1983 but he fell ill, on 26th February, 1983. His information was sent to the department on 16th March, 1983. The workman came to the factory on 1st April, 1983 with the fitness certificate, but the management refused to take him on duty saying that his name was struck off. He approached the Labour Office again on 12th April, 1983, but the management refused to keep him on duty. On this he was advised to give his demand notice.

In their written statement, the management has contended that the claimant was appointed on 13th June, 1982. Previously he resigned from his job and after 12 days, he was appointed on 13th June, 1982 on probation for a period of six months. His work was not satisfactory and hence his probation period was extended for three months, ---vide order, dated 13th December, 1982. The claimant went on leave from 15th February, 1983 to 25th February, 1983. He sent the application for sanction of leave on 25th February, 1983. But there was no medical certificate with the application. Hence it was not considered. He did not improve his work during the period of probation. Hence his services were terminated on 12th March, 1983. His termination letter was sent through registered post but it was returned un-delivered. Previously he was appointed on 27th November, 1981 for a period of six months on probation. His work was not satisfactory. Hence his services were terminated on 2nd June, 1982 and he was paid full wages.

The reference was contested on the following issues :-

1. As per reference ?
2. Whether the workman is gainfully employed ?

I have heard the representative of both the parties and have gone through the evidence on record. My findings on the issues are as under ---

Issue No. I & II :

The contention of the management is that the claimant was appointed on 13th June, 1982 on probation for a period of six months. His probation was extended for 3 months on 13th December, 1983. Hence he was validly terminated on 12th March, 1983 during the period of probation, under the Standing orders of the company. It is further contended that the workman has not completed 240 days of service during the previous 12 calendar months. Hence Section 2 of the Industrial Disputes Act, 1947 does not apply.

The contention of the representative of the workman is that the break of 10 days in the service of the claimant from 2nd June, 1982 to 12th June, 1982 was shown to give break in the service of the claimant and the claimant had completed 240 days of service within 12 calendar months at the time of his termination on 12th March, 1983. According to the latest judgement of Hon'ble Punjab and Haryana High Court in the case of Kapurthala Central Co-operative Bank *versus* Presiding Officer, Labour Court, 1984 L.I.C. Page 974, it is held that where the service of the workman were terminated on their rendering 230 days service with national breaks when the work of the workman was satisfied and others had been recruited in their place. It was an instance of unfair Labour practice and the workmen were held entitled to reinstatement with full back wages.

In the present case break of 10 days from 2nd June, 1982 to 12th June, 1982 was national and the workman had already completed 240 days of service within 12 calendar months on 13th March, 1983. Hence the service of the claimant could not be terminated without complying with the provision of section 25-F of the Industrial Disputes Act, 1947. In the present case the claimant had proceeded on sanctioned leave from 15th February, 1983 to 25th February, 1983. He applied for further medical leave on 25th February, 1983 and when he returned after his leave he was not joined on duty. It is further contended that he remained absent for more than 10 days after the expiry of leave. Hence his services were terminated, according to standing orders of the company. It has been repeatedly held by the Hon'ble Supreme Court that the termination of services of the workman on any ground except mentioned in section 25-F of the I.D. Act was termination under section 25-F and hence provisions of Section 25-F are to be complied with before the termination of his service. In the present case, the workman was not informed that his leave application dated 25th February, 1983 was not sanctioned. Hence his services could not be terminated without complying with the provisions of Section 25-F of the I.D. Act. In the present case provisions of Section 25-F were not complied with which was mandatory. Hence the order of termination of service of the claimant is illegal and void. Therefore, give the award in favour of the workman that the order of termination of the workman was not justified and in order. He is entitled to reinstatement with continuity of service and fully back wages.

Dated 1st September, 1984.

R.N. SINGAL,

Presiding Officer,
Labour Court, Faridabad.

Endorsement No. 1944, dated 11th September, 1984

Forwarded (four copies), to the Commissioner and Secretary to Government Haryana, Labour and Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act.

R. N. SINGAL,

Presiding Officer,
Labour Court, Faridabad.

The 8th October, 1984

No. 9/5/84-6 Lab./6698.-In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer Industrial Tribunal, Faridabad in respect of the dispute between the workman and management of M/s Faridabad Forgings (P) Ltd., Plot No. 54, Sector-6, Faridabad.

BEFORE SHRI R.N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD

Reference No. 418/1982

between

SHRIGOPU RAM, WORKMAN AND THE MANAGEMENT OF M/S. FARIDABAD FORGINGS
(P) LTD., PLOT NO. 54, SECT R-6, FARIDABAD.

Present:

Shri R.L. Sharma, for the workman.

Shri R.C. Sharma, for the Management.

AWARD

In exercise of powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri Gopi Ram, Workman and the Management of M/s Faridabad Forgings (P. Ltd., Plot No. 54, Sector 6, Faridabad, to this Tribunal, for adjudication:—

Whether the termination of service of Shri Gopi Ram was justified and in order? If not, to what relief is he entitled? OPM

2. Notices were issued to both the parties. The claimant in his claim statement, dated 12th January, 1983 alleged that his services were terminated by the respondent Management without any prior notice and that no chargesheet was served on him nor any enquiry was held against him. It was further alleged that termination of service was illegal and he was, therefore entitled to reinstatement with full back wages.

3. The Management in their written statement, dated 8th February, 1983 pleaded that the claimant submitted his resignation of his own accord on 17th June, 1982 which was accepted on that very day. It was further pleaded that the management offered the amount due to the claimant but he demanded more money when the management refused to pay the excess amount. It was then pleaded that the claimant had been signing the papers with the management in Hindi but he thumb-marked on the documents in the present reference with a view to show his ignorance regarding his resignation.

4. The workman in his rejoinder, dated 9th March, 1983, reiterated the pleas taken in the claim statement.

5. On the pleadings of the parties, the following issues were framed on 9th March, 1983:—

(1) Whether the workman submitted his resignation? OPM

(2) Whether the termination of service of Shri Gopi Ram was justified and in order? If not, to what relief is he entitled? OPM

6. It may be mentioned that the Management has examined one witness and documents Ex. M-1 to M-23 have been tendered into evidence. The workman has appeared in the witness box. After going through the evidence and hearing both the sides, my findings on the above issues are as under:—

Issue No. 1 :

7. MW-1 Shri Ram Phal, Accountant-cum-Cashier has been examined by the Management who deposed that the claimant was employed as helper in the respondent factory. He further stated that the claimant used to affix his signatures. The documents Ex. M-1 to M-21 have been proved by this witness and he stated that he identified the signatures of the claimant on these documents. He further stated that Ex. M-22 was the application given by the claimant on the basis of which the advance of Rs. 600 was sanctioned to the claimant and that he had received the said amount,—*vide* voucher Ex. M-23 which was signed by him. He further stated that the claimant had stated that the notice pay and service pay be given to him. The workman has appeared as WW-1 and stated that he worked in the press of the respondent's factory for about four years. He then stated that he had performed the marriage of his daughter and took leave and when he came back after availing of leave, he was not allowed to enter inside the factory premises. He further stated that he informed the Manager of the factory that he was on leave to perform the marriage of his daughter who however stated that no leave application existed on the record. He also stated that he was marked absent even though had applied for leave. He also stated that he had not received any amount regarding settlement of his account and no chargesheet was served on him nor any notice was given to him nor any enquiry was held against him and that he was still willing to join duty in the respondent factory.

8. The case of the Management is that the workman tendered his resignation on 17th June, 1982 (Ex. M-1). The documents Ex. M-2 and M-3, dated 22nd May, 1982 go to show that the workman was administered a warning to discharge his duty properly. The said warning was given on the basis of the notice, dated 17th May, 1982 (Ex. M-4). Ex. M-5 to M-21 are the leave applications, Ex. M-22 is the alleged application filed by the claimant for the amount of advance and that a sum of Rs. 600 was sanctioned to the claimant as an advance. Ex. M-23 is the voucher, dated 7th May, 1982 regarding the alleged payment of Rs. 600 as advance to the claimant. The claimant has denied having tendered his resignation. The documents Ex. M-1 to M-23 have been produced by the Management to show that the claimant used to sign these documents in Hindi. The claimant statement and demand notice of the claimant shows that the claimant affixed thumb-impression. Shri Gopi Ram claimant stated that he never signed the documents produced by the Management and that he was an illiterate person and could not affix signatures. He further stated that he took leave to perform the marriage of his daughter. He denied that he tendered his resignation. In demand notice, it was clearly mentioned that he remained on leave upto 16th June, 1982 and that he was refused to join duty on 17th June, 1982. In the witness box, he wrongly mentioned the year as 1979 because he clarified the position by stating that he was an illiterate person and did not know the date as

well as the year when he took leave to perform the marriage of his daughter about two years ago. He appeared in the witness box on 30th June, 1984. Consequently the claimant proceeded on leave in the year 1982. The case of the management is that the claimant had tendered his resignation on 17th June, 1982 of his own accord cannot be believed because the claimant had proceeded on leave to perform the marriage of his daughter and reported himself for duty on 17th June, 1982. He is a poor workman and must be in need of money after performing the marriage of his daughter. Moreover the claimant stated that he never signed the documents produced by the Management because he was an illiterate. The demand notice and the claim statement were thumb-marked by him. Under all these circumstances it cannot be held that the claimant tendered his resignation Ex. 'M-1' of his own accord. The issue is decided against the Management.

Issue No. :

9. While discussing issue No.1 it has been found that the claimant did not tender his resignation. He was in service of the Management since 1979. He was not paid any compensation or notice pay etc. when his services were terminated with effect from 17th June, 1982. The provisions of the section 25-F of the Industrial Disputes were, therefore, not complied with. Consequently the termination of service of the claimant was not justified and in order and as such the claimant is entitled to reinstatement with full back wages. The award is passed accordingly.

R. N. BATRA,

Presiding Officer.

Dated 5th September, 1984.

Industrial Tribunal, Haryana,
Faridabad.

Endorsement No. 939, dated 14th September, 1984.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

R. N. BATRA,

Presiding Officer.

Industrial Tribunal, Haryana,
Faridabad.

No. 9/5/84-6Lab/6704.--In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s. East India Cotton Manufacturing Company Ltd., 17-H, Industrial Area, N.I.T., Faridabad:--

BEFORE SHRI R. N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 271/1981

between

SHRI JALBIR SINGH, WORKMAN AND THE MANAGEMENT OF M/S EAST INDIA COTTON
MANUFACTURING COMPANY LTD., 17-H, INDUSTRIAL AREA, FARIDABAD.. N.I.T.

Present:--

Shri H. R. Dua for the workman.

Shri R. C Sharma for the Management.

AWARD

In exercise of powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act 1947, the Governor of Haryana referred the following dispute between Shri Jalbir Singh workman and the Management of M/s. East India Cotton Manufacturing Company Ltd., 17-H, Industrial Area, Faridabad, N.I.T., to this Tribunal, for adjudication:--

Whether the termination of services of Shri Jalbir Singh was justified and in order ? If not, to what relief is he entitled ?

2. Notices were issued to both the parties. The claimant in his claim statement, dated 6th December, 1981, alleged that he was in permanent employment of the respondent management that his services were illegally terminated and that a reference was made to the Industrial Tribunal, Haryana, Faridabad when he was reinstated on 4th February, 1980 with full back wages. It was alleged that the claimant reported himself for duty but the Management did not allow him to resume duty and that the backwages were also not paid to him. It was further alleged that he filed an application under section 33-C(2) of the Industrial Disputes Act, 1947 for computation of his back wages when the management took the plea that they had filed a writ petition in the Hon'ble Supreme Court of India which was fixed for 2nd December, 1980 and, consequently, the award has not been implemented. It was further alleged that the Labour Court awarded him back wages,—vide order, dated 30th April, 1981. It was also alleged that the Management terminated services of the claimant in an illegal manner. It was further prayed that the claimant be reinstated with full back wages.

3. The Management in their written statement, dated 30th December, 1981, pleaded that the claimant was reinstated with full back wages by the Industrial Tribunal, Haryana on 4th February, 1980 but he did not report for duty even though the Management had written the letter dated 8th December, 1980 to the claimant in that respect and that instead of reporting himself for duty, the claimant wrote a letter, dated 17th December, 1980 to the Labour Inspector, Faridabad in which false and defamatory allegations were made against the Factory Manager and the Personnel Manager. It was further pleaded that the Management again wrote the letter, dated 28th December, 1980 to the claimant which he had refused to receive and that the Management dismissed the claimant on 7th April, 1981.

4. The claimant in his rejoinder, dated 25th March, 1982 reiterated the pleas taken in the claim statement.

5. On the pleadings of the parties, the following issue was framed on 25th March, 1982 —

(!) Whether the termination of service of Shri Jalbir Singh was justified and in order? If not, to what relief is he entitled. OPM

6. It may be mentioned that the management has examined three witnesses and the documents Ex. M-1 to M-10, have been tendered into evidence. The workman has appeared in the witness box and the documents Ex. W-1 and W-2 have been tendered into evidence. After going through the evidence and hearing both the representatives, my finding on the above issue is as under :-

Issue No. 1:

7. The Management has examined Shri P.C. Jain, Clerk of the Labour Inspector to prove the documents Ex. M-1 to M-6, MW-2 Shri Bahadur Singh, Security Officer of the respondent factory stated that the claimant was employed as helper in their Company. He further stated that the claimant never reported himself for duty after termination of his service. MW-3 Shri O.P. Ahuja, Personnel Manager of the respondent company stated that the Industrial Tribunal gave the award in favour of the claimant when the writ petition was filed by the Management in the Hon'ble High Court of Punjab and Haryana and that the appeal filed by the Management in the Hon'ble Supreme Court was not admitted. He also proved the documents Ex. M-7 to M-9. He then stated that they had written letter to the workman to resume duty, but he never came to join duty, due to which the workman was discharged. Shri Jalbir Singh WW-1, however stated that he was turned out by the Management when he served demand notice and that he was reinstated with full back wages and that he filed an application in the Labour Court and the amount of Rs. 17,444 has awarded to him. He further stated that he used to go to the factory but he was not allowed to enter the premises of the factory and filed the complaint Ex. M-3 to the Labour Inspector but the Management did not appear in those proceedings. He further stated that he was willing to serve in the factory even now. He then stated that no enquiry was held against him nor any letter was given to him nor any charges-sheet was served on him.

8. The oral testimony of the Management is that after the present claimant was reinstated by the Industrial Tribunal, Faridabad, he did not report himself for duty and ultimately the Management dismissed him. Ex. M-1 is the letter, dated 11th November, 1980 sent by the Labour Inspector, Faridabad to the Respondent management asking them to expedite the implementation report regarding the award, dated 4th February, 1980. Ex. M-2 is the letter, dated 8th December, 1980 sent by the Management to the claimant, asking him to report himself for duty. Ex. M-7 is the postal receipt. Ex. M-3 is the letter, dated 12th December, 1980 sent by the claimant to the Management in which he mentioned that he went to the factory premises but was not allowed to join duty and was given a threat to sign the blank papers but he refused to do so. Ex. M-4 is the letter, dated 18th December, 1980, sent by the Labour Inspector to the respondent Management asking them to come to his office on 24th December, 1980. Ex. M-6 is the letter, dated 25th December, 1980 written by the Management to the workman asking him to resume duty and that disciplinary action could be taken against him for writing the letter, dated 8th December, 1980. Ex. M-9 is the letter, dated 7th April, 1980 by which the workman was dismissed because he refused to receive the registered letter, and had failed to resume duty. Ex. M-8 is the registered envelope on which it is recited that the addressee had refused to receive the registered letter. Ex. M-10 is the copy of the written statement filed by the Management before the Deputy Labour Commissioner, Haryana, Ballabgarh. Ex. W-1 is the copy of the written statement,

dated 21st July, 1980 filed by the Management before the Presiding Officer, Labour Court, Haryana, Faridabad in which it was stated that the award was given in favour of the claimant, but the management had filed an application in the Hon'ble Supreme Court of India which was fixed for 2nd December, 1980 and, therefore, the award has not been implemented. Ex. W-2 is the copy of the award, dated 30th April, 1981 given by the Presiding Officer, Labour Court, Faridabad, according to which the earned wages amounting to Rs. 16,232 and Rs. 1,212 as earned leave were awarded to the workman. The case of the management is that the workman did not report for duty even though he was reinstated by the Industrial Tribunal, Faridabad on 4th February, 1980 and since the efforts of the management failed, therefore, the claimant was dismissed from service. The oral as well as documentary evidence which has been discussed above in detail goes to show that the award was given in favour of the workman on 4th February, 1980 and the Labour Inspector asked the management to comply with the said award, vide letter, dated 11th November, 1980 (Ex. M-1). The Management then asked the claimant to join duty (Ex. M-2) but the workman informed the management that he was not allowed to resume duty and was asked to sign some blank documents and was given threats, (vide letter Ex. M-3). The letter Ex. M-6 does not help the management because the claimant succeeded in getting the award and was reinstated on 4th February, 1980 with full back wages. He got the amount of back wages etc. on the basis of the award of the Labour Court, dated 30th April, 1981, vide document Ex. W-2. After facing all this litigation it cannot be believed that the workman had refused to join duty. The Management in their reply, dated 21st July, 1981 Ex. W-1, admitted that the award has not been implemented because their petition in the Hon'ble Supreme Court was fixed for hearing for that date. It is thus apparent that up to 2nd December, 1980 the Management did not allow the claimant to resume duty. Shri Jalbir Singh, workman WW-1 stated in his cross-examination that he never refused to receive the letter Ex. M-8. The postman has not been produced by the management to prove the endorsement made on the registered envelope, when he had stated that he never refused to receive this letter and as such the letter Ex. M-8 does not help the management. Moreover, no enquiry was held by the management nor any chargesheet was served on the claimant before dismissing him. When all the circumstances are taken into consideration, it cannot be believed that the workman refused to join duty but on the other hand the impugned order of dismissal Ex. M-9, dated 7th April, 1981 cannot be called a legal one. The Management has placed reliance on the ruling reported as *M/s Daljeet & Co. Limited. Rupar v/s The State of Punjab & Others*, 1962 Current Law Reporter (V. II) page 1, in which it is laid down that where the workman was dismissed for making false report, it was a good ground to decline the reinstatement. The ruling is distinguishable on facts because in the present case no such false report was made by the claimant to the police nor any enquiry was held by the Management against the workman before dismissing the workman. The second ruling is *Nair (P.K.) and Labour Appellate Tribunal of India and another*, 1957-I-LJ-page 216. In that case, the management had held enquiry, before dismissing the claimant. This ruling is distinguishable on facts because in the present case no enquiry was held. The third ruling is *Jai Chand Bansal v/s Industrial Tribunal (N.A. Athalye), Maharashtra*, and another 1966-I-LJ-page 289. In that case, the contents of the letter which contained offensive remarks were admitted. The ruling is distinguishable on facts because in the present case no enquiry was made by the Management on the letter Ex. M-3 written by the claimant to the Labour Inspector in which it was alleged that he was threatened to sign the blank documents, failing which he would be thrown in the boiler. The fourth ruling is *Lakshmi Devi Sugar Mills Ltd. versus Jadunandan Singh*, 1955-II-LJ-page 251. In that case, the chargesheet was served on the claimant. This ruling is therefore, distinguishable on facts likewise. In the fifth ruling reported as *Bennett Coleman & Co. Ltd., and M. Valladares and Others* 1955-II-LJ-page 548, the workman were chargesheeted and as such, it is distinguishable on facts.

The sixth ruling is *East India Coal Company Ltd. and Parbati Sankar Mukherjee*, 1959-II-LJ-page 227. In this case, the domestic enquiry was held. The ruling is, therefore, distinguishable on facts. The seventh ruling is *Har Charan Singh v. Shiv Rani and others*, AIR-1981-Supreme Court-1234, in which it is laid down that where the addressee had refused to accept the registered letter there was presumption of due service. This ruling is distinguishable on facts because in the present case, the claimant has denied having refused to accept the letter Ex. M-9 and the postman has not been produced by the Management in rebuttal. The 8th ruling is *Orissa Cement Ltd., and Adikanda Sahul* 1960-I-LJ-page 519. In that case, the workman was charged with the misconduct of abusing his superior officer. The ruling is distinguishable fact because no chargesheet was framed in the present case. The rulings relied upon by the Management, therefore, do not help them for reasons given above.

The claimant has placed reliance on the ruling reported as *Santosh Gupta v. State Bank of Patiala*, 1980-II-LJ-72 in which it is laid down that where the provision of Section 25 of the Industrial Disputes Act were not complied with, the termination of service was illegal and workman would be reinstated with full back wages. It has been found that the dismissal of the claimant was not justified and in order because the provisions of Section 25-F of the Industrial Disputes Act, 1947 have not been complied with. Therefore, the claimant is entitled to reinstatement with full back wages. The award is passed accordingly.

Dated 5th September, 1984.

R. N. BATRA,

Presiding Officer,

Industrial Tribunal, Haryana,
Faridabad.

Enst. No. 945, dated the 14th September, 1984

Forwarded (four copies) to the Commissioner and Secretary to Govt., Haryana, Labour & Employment Departments, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

R. N. BATRA.

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 9/5/84-GLab. /6767.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and management of M/s Eicher Goodearth, Ltd., N.I.T., Faridabad:—

BEFORE SHRI R.N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 110/1983

between

SHRI NAND KUMAR WORKMAN AND THE MANAGEMENT OF M/S EICHER GOODEARTH
LTD. N.I.T., FARIDABAD

Present :—

Shri Darshan Singh, for workman.

Shri R.C. Sharma, for the Management.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section-10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri Nand Kumar, Workman and the Management of M/s Eicher Goodearth Ltd. N.I.T., Faridabad, to this Tribunal for adjudication :—

Whether the termination of service of Shri Nand Kumar was justified and in order ? If not, to what relief is he entitled?

2. It may be mentioned that notices were issued to both the parties. The claimant in his claim statement, dated 8th April, 1983 alleged that he was working as permanent workman at Rs. 340 per month with effect from 3rd October, 1981 and that his services were terminated on 1st December, 1982 without any charge-sheet etc. and that no payment was made to him under the provisions of the Section-25-F of the Industrial Dispute Act, 1947. It was alleged that the termination was illegal and unjustified and as such, the claimant was entitled to reinstatement with full back wages.

3. The respondent company in their written statement, dated 8th April, 1983, pleaded that the claimant was working as a casual workman and he worked for 225 days only during the years 1981 and 1982 and as such, the Management was within its right to terminate his service who had no lien on the post.

4. The workman in his rejoinder, dated 15th May, 1984, reiterated the pleas taken in the claim statement.

5. On the pleadings of the parties, the following issue was framed on 15th May, 1984 :—

Whether the termination of service of Shri Nand Kumar was justified and in order ? If not, to what relief is he entitled ?

6. It may be mentioned that both the parties had led evidence. After going through the same and hearing their representatives, my findings on the above issue is as under :—

Issue No. 1—

7. The Management has examined Shri Netar Pal Singh (MW-1) who stated that whenever the workload justified, they used to employ casual workers to cope with the increased work. He further stated that casual

workers were paid on daily rate system and that the claimant was the casual worker in their factory. He also stated that he had prepared the chart Ex. M-1 regarding the wages paid to the claimant in which full details of attendance had been given and that Ex. M-2 was the report regarding the conciliation proceedings.

8. The workman Shri Nand Kumar had appeared as WW-1 and stated that he was employed in the factory as helper in Tractor Assembly Department. He then stated that he was not allowed to join duty in December, 1982 and no letter was given to him while terminating of his service nor any charge sheet was issued. He further stated that no compensation, etc. was paid to him and that he worked in the factory continuously. He further stated that some new person had been employed by the Management in his place and that he was unemployed even now. WW-2 Shri Bacha Parsad stated that the claimant was working as helper and that he was turned out from the factory. He then stated that he was replaced by a new man. He further stated that the claimant worked continuously without any break.

9. The case of the Management is that the claimant was a casual worker and he had worked for 225 days during the period 3rd October, 1981 to 1st December, 1982 and as such, he was not entitled to compensation etc. and that the Management was within its right to terminate his service. The ruling reported as *Lalappa Lingappa and others qud Laxmi Vishnu Textile Mills, Sholapur*, 1981-I-LLJ-page 308, has been relied upon, in which it is laid down that the permanent employees were not entitled to payment of gratuity for the years they remained absent without leave and had actually worked for less than 240 days in a year. The ruling is based on the provisions of Section 25-C of the Industrial Disputes Act, 1947, the explanation of which deals with a badli workman. It may be mentioned at this stage that it is not the case of any party in the pleadings that the claimant was badli workman. As such the provisions of Section 25-C of the Industrial Disputes Act, are of no help to the Management. Further, the claimant has not alleged that he was entitled to payment of gratuity but on the other hand he has posed that he was entitled to compensation etc. under the provisions of Section 25-F of the Industrial Disputes Act, 1947. The ruling reported as 1981-I-LLJ-page 308 (*Supra*) deals with the Payment of Gratuity and is thus of no help to the Management. The testimony of the workman is that he worked continuously with the respondent factory whereas the case of the Management is that he worked for less than 240 days. Ex. M-1 is the chart in which details of attendance of the claimant have been given. In the ruling reported as *The Kapurthala Central Co-operative Bank Ltd. Kapurthala versus The Presiding Officer, Labour Court, Jullundhur and others*, 1984-Lab. 1. C. page 974, it has been held by the Hon'ble Punjab and Haryana High Court that where the services of the workmen were terminated on their rendering 230 days service with notional breaks when the work of the workman was satisfactory and others had been recruited in their place, it was instance of unfair labour practice and, when the workmen were entitled to reinstatement then logical consequences was that they should get their full back wages. In the chart Ex. M-1, the service rendered by the claimant has been shown with notional breaks, for example 3rd October, 1981 to 7th October, 1981, 12th October, 1981, 14th October, 1981 to 17th October, 1981, 20th October, 1981 to 23rd October, 1981, 25th October, 1981, 29th October, 1981, 31st October, 1981 and so. Following the above rulings of the Hon'ble Punjab and Haryana High Court which fully applies to the facts of the present case, it is held that the termination of the service of the claimant by the management was illegal because on the basis of the notional breaks in service, the period was shown to be more than 240 days. In that ruling the workmen were held entitled to reinstatement because the practice of re-termining the workman by showing notional breaks was not upheld. Consequently the provisions of Section 25-F of the Industrial Disputes Act apply to the case of the applicant. Since this provision has not been complied with, therefore, the termination of service of the claimant was neither justified nor in order and as such, the claimant is entitled to reinstatement with full back wages. The award is passed accordingly.

Dated the 14th September, 1984.

R.N. BATRA,

Presiding Officer,

Industrial Tribunal, Haryana,
Faridabad.

Enst. No. 948, dated the 14th September, 1984.

Forwarded (four copies) to the Commissioner & Secretary to Govt., Haryana, Labour & Employment Departments, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

R.N. BATRA,

Presiding Officer,

Industrial Tribunal, Haryana,
Faridabad.